Frontline Security Services, Inc. *and* United Security & Police Officers of America (USPOA). Cases 05–CA–162677 and 05–CA–162945

May 15, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon charges filed by United Security & Police Officers of America (USPOA) (the Union) on October 21 and 26, 2015, alleging that the Respondent violated Section 8(a)(5) and (1) of the Act, the Respondent and the Union entered into an informal settlement agreement, which the Regional Director for Region 5 approved on February 24, 2016.[1] Among other things, the settlement agreement required the Respondent to: (1) post the notice to employees in prominent places for 60 consecutive days; (2) distribute the notice by email to all employees, and forward a copy of that email with all of the recipients' email addresses to the Region's compliance officer; and (3) make whole the named employees and the Union as identified in the backpay paragraph of the settlement by paying to them the amounts identified therein, including making appropriate withholdings for each named employee.

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

By letter dated February 26, the Region's compliance officer sent the Respondent a copy of the approved settlement agreement, with a cover letter advising the Respondent to take the steps necessary to comply with it. On March 15, by email, the Region's compliance officer inquired into the status of the Respondent's compliance with the terms of the settlement agreement.[2] Having received no response, the Region's compliance officer, by letter dated March 28, again sent the Respondent a copy of the settlement agreement and the cover letter soliciting the Respondent's compliance.

By letter dated April 7, the Regional Director notified the Respondent that it had failed to comply with the terms of the settlement agreement, and that it must comply and provide evidence of its compliance within 14 days, or the Region would institute default proceedings against the Respondent. By email dated April 13, the Region's acting compliance officer again solicited compliance with the settlement agreement and informed the Respondent that confirmation of all posting requirements must be submitted to the Region by April 15, and all backpay must be submitted by May 2. Then, by email dated April 27, the Region's acting compliance officer sent the Respondent the Regional Director's earlier April 7 letter and a Certification of Posting form. This email explained that the deadline for compliance was April 21, and that the Region had not received any evidence of compliance. By email dated May 3, the acting compli-

[1] All subsequent dates are in 2016, unless otherwise indicated.

[2] That same day, the Respondent's counsel replied that she was no longer representing the Respondent but was forwarding the Region's inquiry to the Respondent's chief executive officer, Devonne Edwards.

ance officer again notified the Respondent that the Region had not received any evidence of compliance.

On May 3, the Region received checks from the Respondent, made payable to each of the named employees in the backpay paragraph of the settlement agreement, for the combined amounts of backpay, health and welfare benefits, and pension payments required by the settlement agreement. However, the Respondent failed to make appropriate withholdings for each employee and failed to submit interest checks for each employee. The Respondent also did not provide checks for any payments owed to the Union, as required by the settlement agreement.

On May 5, the Region received checks from the Respondent for the interest payments owed to each of the named employees in the backpay paragraph of the settlement agreement. However, the Respondent did not provide checks for any payments owed to the Union, as required by the settlement agreement.

By letter dated May 10, the Region's acting compliance officer notified the Respondent that, although it had submitted backpay checks to the Region, it continued to be in noncompliance with the settlement agreement, specifically by failing to: (a) make appropriate withholdings from each named employee's backpay check; (b) make whole the Union by payment in the amount identified in the backpay paragraph of the settlement agreement; (c) post the notice in prominent places for 60 consecutive days; and (d) distribute the notice by email to all employees who work at the worksite, and forward a copy of that email with all of the recipients' email addresses to the Region's compliance officer. The Respondent was further advised that the interest checks would be held by the Region and would be distributed to the named employees after the Respondent submitted the corrected backpay checks[3]; that interest would continue to accrue until the Respondent complied with the settlement agreement; and that thus the amount of interest owed to each employee may change. The Respondent failed to respond or comply.

Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, on July 29, the Regional Director issued a consolidated complaint based on breach of affirmative provisions of settlement agreement (the complaint). On October 14, the General Counsel filed a Motion for Default Judgment with the Board. On October 17, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

[3] According to the Region, the Respondent never submitted corrected backpay checks. Thus, on September 27, the Region returned the interest checks to the Respondent. On October 7, the checks were returned to the Region as undeliverable.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to: (a) make appropriate withholdings from each named employee's backpay check; (b) make whole the Union by payment in the amount set forth in the backpay paragraph of the settlement agreement; (c) post the notice to employees in prominent places for 60 consecutive days; and (d) distribute the Notice by email to all employees who work at the worksite, and forward a copy of that email with all of the recipients' email addresses to the Region's compliance officer. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations of the complaint are true.[4] Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Landover, Maryland, and has been engaged in the business of providing security services to State and Federal government agencies, including the Small Business Administration in Washington, D.C.

In conducting its operations during the 12-month period ending June 30, 2016, the Respondent performed services valued in excess of $50,000 in states other than the State of Maryland. Also during the 12-month period ending June 30, 2016, the Respondent has conducted its business operations in Washington, D.C., and the Board asserts plenary jurisdiction over enterprises in Washington, D.C.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

[4] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

Leon Bryant	Director of Operations
Frank Duran	Chief Operations Officer
Devonne Edwards	Chief Executive Officer

At all material times, Kimberly Miller held a position within the Respondent's payroll department and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time security officers, corporals, and sergeants employed by the Employer at the Small Business Administration, currently located in Washington, D.C.; excluding all lieutenants, captains, office clerical employees, professional employees, managerial employees, and supervisors as defined in the Act.

On April 27, 2010, the Board certified the Union as the exclusive collective-bargaining representative of the unit.

At all times since April 27, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On January 30, 2014, the Respondent and the Union entered into a collective-bargaining agreement encompassing the terms and conditions of employment of the unit, effective from May 31, 2013, through April 30, 2016. On or about July 13, 2015, the Respondent and the Union entered into an agreement amending portions of the above collective-bargaining agreement.

Since about April 27, 2015, the Respondent failed to continue in effect all the terms and conditions of the amended collective-bargaining agreement described above, by failing to remit dues and fees to the Union, which had been deducted from unit employees' pay.

Between about August 1, 2015, and October 1, 2015, the Respondent failed to continue in effect all the terms and conditions of the agreement described above by failing to pay a wage increase.

Between about August 2, 2015, and November 22, 2015, the Respondent failed to continue in effect all the terms and conditions of the agreement described above by failing to pay a health and welfare benefit increase, and a pension contribution increase.

The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without the Union's consent.

During the above period, the Respondent has failed and refused to meet and bargain with the Union.

By the above conduct, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

By the above conduct, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1). The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to take certain affirmative action designed to effectuate the policies of the Act, as requested by the General Counsel. Specifically, we shall order the Respondent to comply with the unmet terms of the settlement agreement approved by the Regional Director for Region 5 on February 24.

Accordingly, we shall order the Respondent to make whole the named employees and the Union as identified in the backpay paragraph of the settlement agreement by paying to them the amounts set forth therein, plus interest, including making appropriate withholdings for each named employee; to make whole unit employee Linzy Youmans by paying her contractually-required wage rates, pension benefit rates, and health and welfare benefit rates for all hours worked as an employee; to preserve and to make available to the Board or its agents all records necessary to analyze the amount of backpay due for Youmans;[5] to compensate employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award; to post the notice to employees in prominent places, including all places where notices to employees are customarily posted, for 60 consecutive days; and to distribute the notice by email to all employees who work at the facility, and to forward a copy of that email with all of the recipients' email addresses to the Region's compliance officer.

In limiting our affirmative remedies to those enumerated above, we are mindful that the General Counsel is empowered under the default provision of the settlement agreement to seek "a full remedy for the violations found

[5] In the backpay paragraph of the settlement agreement, the amounts due to Youmans are listed as "TBD" ("to be determined"). The Region, in a letter to the Respondent dated May 10, 2016, stated that the Respondent continued to be in noncompliance with the terms of the settlement agreement by failing to, inter alia, "[p]rovide a spreadsheet reflecting hours worked by employee Linzy Youmans at the Worksite with supporting documentation."

as is appropriate to remedy such violations."[6] However, in his Motion for Default Judgment, the General Counsel has not sought such additional remedies and we will not, sua sponte, include them.[7]

ORDER

The National Labor Relations Board orders that the Respondent, Frontline Security Services, Inc., Landover, Maryland, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Make unit employee Linzy Youmans whole by paying her contractually-required wage rates, pension benefit rates, and health and welfare benefit rates for all hours worked as a unit employee.

2. Remit $8,223.33, plus interest, to Region 5 of the National Labor Relations Board to be disbursed to the unit employees in accordance with the terms of the settlement agreement approved by the Regional Director on February 24, 2016.

3. Remit $9,788.01, plus interest, to Region 5 of the National Labor Relations Board to be disbursed to the Union in accordance with the terms of the settlement agreement approved by the Regional Director on February 24, 2016.

4. Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order for employee Linzy Youmans.

5. Compensate employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).[8]

6. Post at its facility located at 409 Third Street, S.W., Washington, D.C., copies of the attached notice marked "Appendix."[9] The notice shall be posted in the same manner as agreed to in the settlement agreement. In addition to physical posting of paper notices, the Respondent shall email a copy of the signed notice to all employees who work at the facility. The notice shall be emailed in the same manner as agreed to in the settlement agreement.

7. Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 15, 2019

John F. Ring, Chairman

Lauren McFerran, Member

[6] As set forth above, the settlement agreement provided that, in case of noncompliance, the Board may issue such a full remedy.

[7] See, e.g., *Benchmark Mechanical, Inc.*, 348 NLRB 576, 578 (2006). The General Counsel specifically requested in his motion for default judgment that the Board "issue a Decision containing findings of fact and conclusions of law based on, and in accordance with, the allegations of the consolidated complaint, remedying such unfair labor practices, including requiring Respondent to comply with the terms of the settlement agreement, and granting such other relief as may be just and proper to remedy the violations described in the consolidated complaint." Motion at 8–9. We construe the General Counsel's motion as seeking enforcement of the unmet provisions of the settlement agreement.

The General Counsel also requests that the Board order the Respondent to remit to the Union all dues and fees it deducted from employees' pay pursuant to valid dues-checkoff authorizations from January 15 to April 30, 2016, the date the collective-bargaining agreement expired. However, the settlement agreement, which was executed on February 24, provides only that the Respondent shall make whole the Union by paying delinquent union dues totaling $9,788.01, plus interest. Accordingly, as the General Counsel has asked that the remedy require the Respondent to comply with the terms of the settlement agreement, we decline to order the Respondent to reimburse the Union for dues and fees deducted from employees' pay from January 15 to April 30, 2016.

The General Counsel, in his "proposed order" attached to his motion, provides at par. (h) that "[i]n addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means." The settlement agreement, however, only provides that, in addition to physical posting, the notice will be emailed to all employees who work at the facility. Thus, we decline to order that the notice be posted on an intranet or internet site, as this remedy was not included in the settlement agreement. Rather, we shall order that the notice be posted in accordance with the terms of the settlement agreement.

[8] The settlement agreement provided that the Respondent would file this report with the Social Security Administration, consistent with existing Board law at the time the agreement was executed. See *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014). Subsequently, however, the Board, in *AdvoServ of New Jersey*, 363 NLRB No. 143 (2016), held that respondents should file these reports with the Regional Director of the appropriate NLRB Region, rather than with the Social Security Administration. Accordingly, we have modified this portion of the Order and the notice to be consistent with current Board law.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with United Security and Police Officers of America (USPOA) (the Union), by failing to make contractually-required remittances of deducted union dues to the Union, the exclusive collective-bargaining representative of the following bargaining unit:

> All full-time and regular part-time security officers, corporals, and sergeants employed by the us at the Small Business Administration, currently located in Washington, DC; excluding all lieutenants, captains, office clerical employees, professional employees, managerial employees, and supervisors as defined in the Act.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit, by failing to make contractually-required wage increases.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit, by failing to make contractually-required periodic pension benefit increases.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit, by failing to make contractually-required health and welfare benefit increases.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL make the contractually-required remittance of union dues, with interest, to the Union.

WE WILL pay employees for the wages, pension benefits, and health and welfare benefits lost because of the changes to terms and conditions of employment that we made without bargaining with the Union.

WE WILL compensate employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

FRONTLINE SECURITY SERVICES, INC.

The Board's decision can be found at www.nlrb.gov/case/05-CA-162677 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.